

# LEASE AGREEMENT

THIS LEASE, made this 27<sup>th</sup> day of July, 2008, by and between **DRAIMAN PROPERTIES 4, LLC**, a Maryland limited liability corporation, hereinafter called "Owner," and **MONTGOMERY COUNTY MARYLAND**, a body corporate and politic and a political subdivision of the State of Maryland, through the Department of Liquor Control, hereinafter called "County", collectively the "Parties".

## ARTICLE I

### GRANT AND TERM

#### SECTION 1.01, LEASED PREMISES

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the County to be observed and performed, the Owner demises and leases to the County, and County rents from Owner, those certain premises, now or hereinafter to be erected at 4920 Hampden Lane, Bethesda, Maryland 20814 and are herein called the "Leased Premises" containing an area of approximately 5,000 square feet located in the shopping center known as the "Shoppes of Bethesda" or such other name as it may be known as from time to time ("Shopping Center"). The boundaries and location of the Leased Premises are outlined in red on the site plan of the Shopping Center, which is marked Exhibit "A" attached hereto and made a part hereof.

#### SECTION 1.02, USE OF ADDITIONAL AREAS

The use and occupancy by the County of the Leased Premises shall include the use in common with others entitled thereto of the common areas, service roads, loading facilities, sidewalks and customer care parking areas, shown and depicted on Exhibit "A," and other facilities as may be designated from time to time by the Owner, subject, however, to the terms and conditions of this Agreement and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Owner of which the County has written notice of such rules.

#### SECTION 1.03, COMMENCEMENT; RENT COMMENCEMENT AND ENDING DATE OF TERM

The term of this Lease shall commence on the earlier to occur of (i) July 1, 2008, or (ii) the date that this Lease is ratified and executed by the County. If this Lease has not been ratified and executed by the County on or before July 1, 2008, Owner shall have the option, in its sole discretion, to withdraw its offer to Lease the Leased Premises by delivery of written notice to County, and this Lease shall be null, void and of no force and effect ten (10) days after Owner's written notice unless, prior to the expiration of such ten (10) day period, County has delivered an executed original of this Lease to the Owner.

The County's obligation for the payment of rent and additional rent hereunder shall commence on October 1, 2008, and is referred to herein as the "Rent Commencement Date."

The term of this Lease shall be for a period of ten (10) years following the Rent Commencement Date and will end on the last day of the 10th consecutive full lease year as said term "lease year" is hereinafter defined, unless sooner terminated as herein provided.

#### SECTION 1.04, LEASE YEAR DEFINED

The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive full calendar months. The first Lease Year shall commence on the Rent Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

#### SECTION 1.05, EXCUSE OF OWNER'S PERFORMANCE

Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of the Owner, the Owner shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease, if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the Owner.

#### SECTION 1.06, EXCUSE OF COUNTY'S PERFORMANCE

Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or neglect of the County, the County shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease, if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through Act of God or other cause beyond the control of the County.

### ARTICLE II

#### RENT

#### SECTION 2.01, MINIMUM RENT

Commencing on October 1, 2008, the County agrees to pay Owner at the office of the Owner, or at such other place designated by Owner, without any prior demand therefor and without any deduction or set-off whatsoever, fixed minimum rent at the initial rate of \$47.50 per square foot, as follows:



(a) The annual sum of Two Hundred Thirty-seven Thousand Five Hundred and 00/100 Dollars (\$237,500.00) payable, in advance, on the first day of each calendar month during the first Lease Year, in equal and consecutive monthly installments of (\$19,791.67).

(b) The annual sum of Two Hundred Forty-four Thousand Six Hundred Twenty-five and 00/100 Dollars (\$244,625.00) payable, in advance, on the first day of each calendar month during the second Lease Year payable in equal and consecutive monthly installments of (\$20,385.42).

(c) The annual sum of Two Hundred Fifty-one Thousand Nine Hundred Sixty-three and 75/100 Dollars (\$251,963.75) payable, in advance, on the first day of each calendar month during the third Lease Year payable in equal and consecutive monthly installments of (\$20,996.98).

(d) The annual sum of Two Hundred Fifty-nine Thousand Five Hundred Twenty-two and 66/100 Dollars (\$259,522.66) payable, in advance, on the first day of each calendar month during the fourth Lease Year payable in equal and consecutive monthly installments of (\$21,626.89).

(e) The annual sum of Two Hundred Sixty-seven Thousand Three Hundred Eight and 34/100 Dollars (\$267,308.34) payable, in advance, on the first day of each calendar month during the fifth Lease Year payable in equal and consecutive monthly installments of (\$22,275.70).

(f) The annual sum of Two Hundred Seventy-five Thousand Three Hundred Twenty-seven and 59/100 Dollars (\$275,327.59) payable, in advance, on the first day of each calendar month during the sixth Lease Year payable in equal and consecutive monthly installments of (\$22,943.97).

(g) The annual sum of Two Hundred Eighty-three Thousand Five Hundred Eighty-seven and 42/100 Dollars (\$283,587.42) payable, in advance, on the first day of each calendar month during the seventh Lease Year payable in equal and consecutive monthly installments of (\$23,632.29).

(h) The annual sum of Two Hundred Ninety-two Thousand Ninety-five and 04/100 Dollars (\$292,095.04) payable, in advance, on the first day of each calendar month during the eighth Lease Year payable in equal and consecutive monthly installments of (\$24,341.26).

(i) The annual sum of Three Hundred Thousand Eight Hundred Fifty-seven and 89/100 Dollars (\$300,857.89) payable, in advance, on the first day of each calendar month during the ninth Lease Year payable in equal and consecutive monthly installments of (\$25,071.49).

(j) The annual sum of Three Hundred Nine Thousand Eight Hundred Eighty-three and 63/100 Dollars (\$309,883.63) payable, in advance, on the first day of each calendar month

during the tenth Lease Year payable in equal and consecutive monthly installments of (\$25,823.64).

#### SECTION 2.02, TAXES

The County shall, during the term of this lease and any extensions thereof, as additional rent, pay pro rata the real estate taxes attributable to the Leased Premises. The County agrees to pay to the Owner, on account of such pro rata share of all real estate taxes, the sum of **One Thousand Eight Hundred Seventy-Five and 00/100 Dollars (\$1,875.00)** per month as County's contribution toward the real estate taxes for the land and improvements comprising the Shopping Center; provided however, that if at the end of each year during the term hereof, the total of the monthly charges paid by the County during such year shall be less than the County's share of the final actual real estate taxes for such year, the County shall pay to the Owner the excess within twenty (20) days after written demand for same by Owner. Unless separately assessed, the real estate taxes attributable to the Leased Premises for each year shall be the amount which is the result of multiplying (a) the real estate taxes assessed against the entire Shopping Center for such year by (b) a fraction whose numerator is the number of gross square feet area of the Leased Premises and whose denominator is the number of square feet area of the Shopping Center, exclusive of common areas. It is understood that the County's pro rata monthly payment may be adjusted from time to time as bills are received from the taxing authority. The Parties agree the County's pro rata share is 14.04%.

#### SECTION 2.03, ADDITIONAL RENT

The County shall pay as additional rent any money required to be paid pursuant to Sections 2.02, 2.04, 10.01, 12.01, 12.02, 13.02, 13.04, 13.05 and 14.01, and all other sums of money or charges required to be paid by County under this Lease, whether or not the same be designated "additional rent." If such amounts or charges are not paid at the time provided in this lease, they shall nevertheless, if not paid when due, be collectible as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Owner.

#### SECTION 2.04, PAST DUE RENT AND ADDITIONAL RENT

If County shall fail to pay, when the same is due and payable, any rent or any additional rent, or amounts or charges of the character described in Section 2.03 hereof, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of 1.5 percent (1.5%) per month plus a One Hundred Dollar (\$100.00) late charge.

**ARTICLE III – PERCENTAGE RENT - INTENTIONALLY DELETED**

**ARTICLE IV – AUDIT - INTENTIONALLY DELETED**

**ARTICLE V**



CONSTRUCTION, ALTERATION, RELOCATION AND REFINANCING  
OF IMPROVEMENTS AND ADDITIONS THERETO

SECTION 5.01, OWNER'S OBLIGATION

Owner shall deliver the Leased Premises to County in "as is" condition, on the commencement of this Lease, except that Owner warrants that the HVAC, and plumbing systems serving the Leased Premises shall be in good working order on the delivery of Leased Premises. Owner shall have no obligation, responsibility or liability to County to construct, or to contribute to the costs of construction, of any improvements or alterations to be made by County in connection with the County's permitted use.

SECTION 5.02, PARKING FACILITIES

Owner has constructed upon the Shopping Center site at its own cost access roads, footways and parking lots or facilities as generally shown on Exhibit "A". Owner reserves the right to make any changes at anytime, all in its sole discretion, provided that County's ability to conduct its business within the Leased Premises shall not be impaired.

SECTION 5.03, CHANGES AND ADDITIONS TO BUILDING

Owner hereby reserves the right at any time to make alterations or additions to and to build additional stories on the building in which the Leased Premises are contained and to build adjoining the same. Owner also reserves the right to construct other buildings or improvements in the Shopping Center from time to time and to make alterations thereof, or additions thereto, and to build additional stories on any such building or buildings and to build adjoining same and to increase or decrease the size of any parking facilities, provided, however, that none of the foregoing shall materially adversely interfere with access to the Leased Premises from the proximate portion of the common areas or reduce the parking facilities below the minimum parking required by applicable codes.

SECTION 5.04, FINANCING - INTENTIONALLY DELETED

SECTION 5.05, RIGHT TO RELOCATE

The purpose of the site plan attached hereto as Exhibit A is to show the approximate location of the Leased Premises. Owner reserves the right at any time to relocate the various buildings, automobile parking areas, and other common areas shown on said site plan.

ARTICLE VI

CONDUCT OF BUSINESS BY COUNTY

#### SECTION 6.01, USE OF LEASED PREMISES

The County shall use the Leased Premises solely for the purpose of wholesale and retail sales of beer, wine, spirits and related products. County will not use or permit, or suffer the use of, the Leased Premises for any other business or purpose.

#### SECTION 6.02, OPERATION OF BUSINESS

The County shall operate all of the Leased Premises during the entire term of this Lease with due diligence and efficiency unless prevented from doing so by causes beyond County's control. The County shall conduct its retail business in the Leased Premises Monday through Saturday from 10:00 a.m. to 9:00 p.m. The County shall not be permitted to receive deliveries of inventory, or make deliveries in connection with wholesale sales on any day after 8:30am. The County shall install and maintain at all times displays of merchandise in the display windows, if any, of the Leased Premises. County shall keep the display windows and signs, if any, in the Leased Premises well lighted during the hours from sundown to 11:00 p.m., unless prevented by causes beyond the control of County. The County shall be obligated to obtain any and all licenses and permits necessary for the occupancy of the Leased Premises and the conduct of its business therein.

Owner acknowledges and agrees that the County may close the Leased Premises for reasonable periods of time in the following instances: (i) to effect necessary repairs or alterations and (ii) to take inventory. Except when necessary to make emergency repairs, the County shall give Owner at least two (2) days notice of each such closing.

#### SECTION 6.03, STORAGE, OFFICE SPACE

County shall use for office, clerical or other non-selling purposes only such space in the Leased Premises as is from time to time reasonably required for County's business in the Leased Premises. No auction, fire or other liquidation sales may be conducted in the Leased Premises without the previous written consent of Owner, which shall not be unreasonably withheld, conditioned or delayed.

#### SECTION 6.04, COUNTY'S ALTERATIONS AND IMPROVEMENTS

- (a) County's Initial Leasehold Improvements. As soon as practicable following the Commencement Date, County shall design, engineer, prepare and submit to Owner detailed preliminary plans and specifications for the construction of the leasehold improvements proposed to be made by the County to the Leased Premises ("County's Leasehold Improvements"). Owner will review the County's preliminary plans and notify County, not later than twenty (20) days following submission to Owner, of any required modifications or conditions required to be made to the preliminary plans or, if there are no such modifications or conditions, of Owner's approval. Owner's approval



shall not be unreasonably withheld, conditioned or delayed. County will submit final Construction Set of Drawings to Owner, as initially approved or modified in accordance with Owner's requirements. County shall pay to Owner a plan review fee (the "Plan Review Fee") in an amount equal to one percent (1 %) of the hard cost of County's Leasehold Improvements within twenty (20) days following Owner's approval of County's Construction Set of Drawings and in any event prior to the commencement of County's work. Owner's approval of the County's plans shall not constitute an opinion or agreement by Owner that the plans are in compliance with applicable laws or building codes. County will be responsible, at County's sole cost and expense, to obtain any necessary permits and approvals required for the construction of the County's Leasehold Improvements prior to the commencement of work. County shall construct and complete the County's Leasehold Improvements, in a good and workmanlike manner, in accordance with the Construction Set of Drawings approved by Owner and in accordance with applicable laws and building codes applicable to the Leased Premises. County shall construct and fit-out the County's Leasehold Improvements using new or like new quality materials, fixtures consistent with a first-class retail premise. County and County's contractors, and subcontractors shall comply with all terms and provisions of this Lease, including all insurance requirements and County's indemnification of Owner and with the building codes, regulations and laws now or hereafter to be made or enforced in the municipality, county and/or state in which said Leased Premises are located and which pertain to such work.

- (b) County shall not make any additional modifications, alterations or improvements to the Leased Premises, beyond the County's Leasehold Improvements, without the prior written approval of Owner, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, County shall have the right, upon thirty (30) days prior written notice to Owner but without Owners consent, to make alterations and improvements to the interior of the Leased Premises that do not within any twelve (12) month period cost more than \$30,000; provided that this sentence shall not apply to any alterations or improvements that affect the structure of the Leased Premises or any utilities or building systems, If County desires to make any additional modifications, alterations, improvements or renovations to the Leased Premises, County shall submit detailed plans and specifications to Owner for approval prior to the performance of any work. If such plans are approved, County shall cause the work to be performed in a good and workmanlike manner, with licensed and qualified contractors approved by Owner, which approval will not be unreasonably withheld, conditioned or delayed.. All such work shall comply with applicable laws and building codes. County shall perform any such work at its sole cost and expense.

- (c) Neither Owner nor Owner's agents shall be liable for any labor or materials furnished or to be furnished to County on account of the County's Leasehold Improvements or any subsequent alterations, improvements or renovations, and no mechanic's or other lien for labor or materials shall attach to or affect any estate or interest of Owner in and to the Shopping Center. The County shall remove or bond any mechanic's or materialmen's liens within ten (10) days of the filing thereof. All materials, fixtures and equipment to be incorporated in the Leased Premises as a result of any alterations, modifications or changes shall be new and first quality.
- (d) Any additions, improvements, alterations and/or installations made by County shall become and remain a part of the building and be and remain Owner's property upon the termination of County's occupancy of said Leased Premises; provided, however, that if Owner gives written notice to County at the expiration or prior termination of this lease to such effect, it may require County to remove any improvements made to the Leased Premises by County and restore such portion of the Leased Premises to their original condition. County shall save Owner harmless from and against all expenses, liens, claims or damages to either property or person which may or might arise by reason of the making of any such additions, improvements, alterations and/or installations.

## ARTICLE VII

### OPERATION OF CONCESSIONS

#### SECTION 7.01, CONSENT OF OWNER

County shall not permit any business to be operated in or from the Leased Premises by any concessionaire or licensee without the prior written consent of Owner which shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE VIII

### SECURITY DEPOSIT

#### **INTENTIONALLY OMITTED**

## ARTICLE IX

### PARKING AND COMMON USE AREAS AND FACILITIES

#### SECTION 9.01, CONTROL OF COMMON AREAS BY OWNER



All automobile parking areas, driveways, entrances and exits thereto, and other facilities (if any shall be furnished by Owner in or near the Shopping Center), including the truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, first-aid stations, comfort stations and other areas and improvements (if any shall be provided by Owner) for the general use, in common, of tenants, their officers, agents, employees and customers, shall at all times be subject to the exclusive control and management of Owner, and Owner shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this Article, provided the Owner will give the County reasonable notice, in writing, of any changes in such rules and regulations. Owner shall have the right to construct improvements and maintain and operate lighting facilities on all said areas and improvements; to police the same; from time to time to change the area, level, location and arrangement of parking areas and other facilities hereinabove referred to; to restrict parking by tenants, their officers, agents and employees; to enforce parking charges (by operation of meters or otherwise), with appropriate provisions for free parking ticket validating by tenants; to close all or any portion of said areas or facilities to such extent as may, in the opinion of Owner's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any part of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, the Owner shall determine to be advisable with a view to the improvement of the convenience and use thereof by tenants, their officers, agents, employees and customers. Owner will operate and maintain the common facilities referred to above in such manner as Owner, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Owner shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common areas and facilities.

#### SECTION 9.02, LICENSE

All common areas and facilities not within the Leased Premises, which County may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of such areas be diminished, Owner shall not be subject to any liability nor shall the County be entitled to any compensation or diminution or abatement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

### ARTICLE X

#### COST OF MAINTENANCE OF COMMON AREAS

#### SECTION 10.01, COUNTY TO BEAR PRO RATA OF EXPENSE

(a) In each calendar year, County will pay to Owner, in addition to the rentals specified in Article II hereof, as further additional rent, subject to the limitation hereinafter set forth, a proportion of the Shopping Center's operating cost, hereinafter defined, based upon the



ratio of the square feet of the Leased Premises to the total square feet of the Shopping Center, exclusive of common areas. Owner and County agree County's pro rata share is 14.04%.

(b) For the purpose of this Section 10.01 the "Shopping Center's operating cost" means the total cost and expense incurred in operating and maintaining the common facilities, hereinafter defined, actually used or available for use by the County and the employees, servants, customers and other invitees of County, excluding only items of expense commonly known and designated as carrying charges, but specifically including, without limitation, gardening and landscaping, the cost of public liability and property damage insurance, real estate taxes and assessments, repairs, line painting, lighting, sanitary control, removal of snow, trash, rubbish, garbage and other refuse, depreciation on machinery and equipment used in such maintenance, the cost of personnel to implement such services, to direct parking, provide parking services, and to police the common facilities and twenty percent (20%) of all the foregoing costs (excluding real estate taxes and assessments, insurance) to cover the Owner's administrative and overhead costs. "Common facilities" means all areas, space, equipment and special services provided by Owner for the common or joint use and benefit of the occupants of the Shopping Center, their customers and other invitees, including without limitation parking areas, access roads, driveways, retaining walls, landscaped areas, truck serviceways or tunnels, loading docks, pedestrian malls, courts, stairs, ramps and sidewalks, comfort and first aid stations, washrooms and parcel pick-up stations.

(c) The additional rent provided to be paid in this Section 10.01 shall be payable monthly. County agrees to pay on account of such costs the monthly sum of **One Thousand Forty-One and 67/100 Dollars (\$1,041.67)** as County's contribution toward the cost of maintaining and operating the common area(s) of the building provided however that if at the end of each calendar year during the term hereof, the total monthly charges paid by County during such year shall be less than the County's share of the final actual gross costs for each year, the County shall pay to the Owner such excess within Twenty (20) days after demand for same by Owner.

(d) Changes in any particular floor area occurring during any period shall be effective on the first day of the next succeeding monthly period.

(e) It is understood that County's pro rata monthly payment, stated in Section C above, is subject to an actual cost adjustment billing annually and that the estimated monthly amount paid on account by County may be adjusted up or down as the case may be as the expenses are incurred by Owner, for the succeeding year. In the case that the County has overpaid for the year, the Owner shall credit the County with the amount of such overpayment towards the County's next payment due.

## ARTICLE XI

### SIGNS, AWNINGS, CANOPIES, FIXTURES, ALTERATIONS

#### SECTION 11.01, INSTALLATION BY COUNTY



All fixtures installed by the County shall be new or completely reconditioned. County shall not make or cause to be made any alterations, additions or improvements or install or cause to be installed any trade fixture, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings or make any changes to the store front without first obtaining Owner's written approval and consent, which shall not be unreasonably withheld, conditioned or delayed. County shall present to the Owner plans and specifications for such work at the time approval is sought.

#### SECTION 11.02, REMOVAL AND RESTORATION BY COUNTY

All alterations, decorations, additions and improvements made by County, or made by Owner on County's behalf by agreement under this lease, shall remain the property of County for the term of the lease, or any extension or renewal thereof. Such alterations, decorations, additions and improvements shall not be removed from the Leased Premises prior to the end of the term hereof without prior consent in writing from the Owner, which shall not be unreasonably withheld, conditioned or delayed. Upon expiration of this lease, or any renewal term thereof, County shall remove all such alterations, decorations, additions and improvements, and restore the Leased Premises as provided in Section 12.03 hereof.

#### SECTION 11.03, SIGNS, AWNINGS AND CANOPIES

County will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises without first obtaining Owner's written approval and consent, which approval shall not be unreasonably withheld, conditioned or delayed, subject to the attached sign criteria marked Exhibit D. County further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times in accordance with Owner's request. Owner agrees that the County's storefront sign shall contain the County's trade name and the County "Seal."

### ARTICLE XII

#### MAINTENANCE OF LEASED PREMISES

#### SECTION 12.01, MAINTENANCE BY COUNTY

County shall at all times keep the Leased Premises (including maintenance of exterior entrances, all glass and show window moldings) and all partitions, doors, fixtures, equipment



and appurtenances thereof (including lighting, heating and plumbing fixtures, escalators, elevators, and any air conditioning system) in good order, condition and repair, (including reasonably periodic painting as determined by Owner), damage by unavoidable casualty excepted, except for structural portions of the premises, which shall be maintained by Owner, but if Owner is required to make repairs to structural portions by reason of County's negligent acts or omission to act, Owner may add the cost of such repairs to the rent which shall thereafter become due. County shall keep the front of the sidewalk of the Leased Premises and any doorways, hallways and walkways leading to or serving the Leased Premises clear and free of snow, ice, litter, trash and dirt. County will keep the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin, other pests, trash and dirt accumulations and shall furnish adequate and proper receptacles for trash and garbage in location(s) designated by Owner. County will provide garbage and trash collection services for the Leased Premises, and will retain an exterminator service, at County's cost.

#### SECTION 12.02, MAINTENANCE BY OWNER

Owner shall maintain and repair the roof and structural components of the Building throughout the term of this Lease. If County refuses or neglects to repair property as required hereunder and to the reasonable satisfaction of Owner as soon as reasonably possible after written demand, Owner may make such repairs without liability to County for any loss or damage that may accrue to County's merchandise, fixtures, or other property or to County's business by reason thereof, and upon completion thereof, County shall pay Owner's costs (including Owner's reasonable administrative overhead expense) for making such repairs, upon presentation of bill therefor, as additional rent.

#### SECTION 12.03, SURRENDER OF LEASED PREMISES

At the expiration of the tenancy hereby created, County shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this lease, reasonable wear and tear excepted, and damage by unavoidable casualty excepted, and shall surrender all keys for the Leased Premises to Owner at the place then fixed for the payment of rent and shall inform Owner of all combinations on locks, safes and vaults, if any, in the Leased Premises. County shall remove all its trade fixtures, and any alterations or improvements as provided in Section 11.02 hereof, before surrendering the Leased Premises as aforesaid and shall repair any damage to the Leased Premises caused thereby. County's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

#### SECTION 12.04, RULES AND REGULATIONS

The rules and regulations are appended to this Lease as Exhibit C and are hereby made a part of this lease, and County agrees to comply with and observe the same. County's failure to keep and observe said rules and regulations shall constitute a breach of the terms of this Lease in the manner as if the same were contained herein as covenants. Owner reserves the right from time to time to amend or supplement said rules and regulations and to adopt and promulgate



additional rules and regulations applicable to Leased Premises and the Shopping Center. The Owner shall provide thirty (30) days written notice to County of such additional rules and regulations, and amendments and supplements, if any, and County agrees thereupon to comply with and observe all such reasonable rules and regulations, and amendments thereto and supplements thereof, provided the same shall apply uniformly to all tenants of the Shopping Center.

### ARTICLE XIII

#### INSURANCE AND INDEMNITY

##### SECTION 13.01 COUNTY PROPERTY DAMAGE AND LIABILITY INSURANCE

A. The County shall obtain and maintain, during the full term of this Lease, and any extension thereof, a policy of commercial general liability insurance with bodily injury limits of \$200,000 (Two Hundred Thousand Dollars) for injury (or death) to one person, \$500,000 (Five Hundred Thousand Dollars) per occurrence, and property damage insurance with a limit of \$200,000 (Two Hundred Thousand Dollars), or such other amounts as may be prescribed, from time to time, as the maximum coverage limits pursuant to the Montgomery County Self-Insurance Program. The County shall have the right to self-insure. These are the maximum limits of liability for which the Montgomery County Self-Insurance Program is responsible, under the Local Government Tort Claims Act, Ann. Code, Cts & Jud. Proc. Sect. 5-301 et seq. (2002 Repl. Vol) as amended.

B. The County agrees that it will not keep in or upon the Premises any article which may be prohibited by the standard form of fire or hazard insurance policy.

C. The County will indemnify Owner and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Premises, or the occupancy or use by County of the Premises or any part thereof, or the County's use of the exterior areas provided by Owner for the comfort and convenience of County, occasioned wholly or in part, to such extent, by any act or omission of County, its agents, contractors, or employees, excepting claims arising out of the acts or omissions of the Owner, the Owner's agents, and employees. Provided, however, that the Owner provides notice of claim to the County immediately. County shall indemnify Owner against any penalty, damage or charge incurred or imposed by reason of County's violation of any law or ordinance.

D. The County further agrees that all personal property in the Premises shall be and remain at County's sole risk, and Owner shall not be liable for any damage to or loss of such personal property excepting damage arising out of the grossly negligent acts or omissions of the Owner, Owner's agents, contractors or employees.

E. Within thirty (30) days of Owner's request, the County shall deliver to Owner a certificate of insurance evidencing the coverage hereinabove described.



F. Any indemnification given by the County under this Lease is expressly limited by the damages caps and notification requirements specified in the Local Government Tort Claims Act (the "LGCTA"), Md. Code Ann. Cts. & Jud. Proc. §§ 5-301 et seq. (2006 Repl. Vol.) Md. Code Ann. Art. 2B §§ 15-201 et seq. (2005 Repl. Vol.) and Md. Code Ann. Cts. & Jud. Proc. §§ 504 et seq. (2006 Repl. Vol.) (the "Department of Liquor Control Immunity Statutes"), (the LGCTA and the Department of Liquor Control Immunity Statutes together the "Immunity Statutes"). Any indemnification given by Tenant is not intended to create any rights in any third parties.

### 13.02 OWNER PROPERTY DAMAGE AND LIABILITY INSURANCE

A. Owner shall obtain and maintain in effect during the term of this Lease a policy or policies of insurance (i) covering the improvements constituting the Shopping Center (including the common areas, but excluding Tenant's leasehold improvements, trade fixtures and other property required to be insured by Tenant) in an amount not less than eighty percent (80) of the full replacement cost (exclusive of the cost of excavations, foundations and footings), as determined from time to time, providing protection against perils included within the standard state of Maryland form of fire and extended coverage insurance policy, together with such other risks, and with such deductibles, as Owner may from time to time determine, and (ii) public liability insurance covering the parking area and other common areas with a combined single limit of at least One Million Dollars (\$1,000,000). The cost of the premiums for any such policies shall be paid by Tenant, based upon the ratio of the square feet of the Leased Premises to the total square feet of all the first floor building space in the Shopping Center, (exclusive of Common Areas).

B. Any such insurance may be effected by a policy or policies of blanket insurance covering additional items or locations or assureds. The County shall have no rights in any policy maintained by Owner and shall not, by reason of payment by the County of its pro rata share of Owner's premium therefor, be entitled to be a named assured thereunder. The Owner will include the County as an additional insured under the Owner's public liability policy required to be maintained hereunder but the County's insurance obligation under Section 13.01 shall be primary to any coverage afforded under the Owner's public liability insurance arising or occurring within the Leased Premises.

C. Within thirty (30) days of the County's written request, the Owner shall provide a certificate of insurance evidencing the coverage hereinabove described within thirty (30) days from execution of this Lease.

D. The Owner will indemnify County and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence upon or at the Premises, or the occupancy or use by the Owner of the Leased Premises or any part thereof including exterior areas, but only if such claims, actions, damages, liability and expense arise out of any act or omission of Owner, its agents, contractors, or employees, excepting claims arising out of the acts or omissions of the County, the County's agents, and employees. Provided, however, that



County provides to Owner prompt written notice of any and all claims under which County will rely on this indemnification. The Owner shall indemnify County against any penalty, damage or charge incurred or imposed by reason of the Owner's violation of any law or ordinance. Any indemnification given by the Owner is not intended to create any rights in any third parties.

#### SECTION 13.03, PLATE GLASS

Tenant shall replace, at the expense of Tenant, any and all plate and other glass damage or broken from any cause whatsoever in and about the Leased Premises.

### ARTICLE XIV

#### UTILITIES

#### SECTION 14.01, UTILITY CHARGES

County shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in the Leased Premises. Should Owner elect to supply the water, gas, heat, electricity or any other utility used or consumed in the Leased Premises, County agrees to purchase and pay for the same, as additional rent, at the applicable rates filed by Owner with the proper regulatory authority. In no event shall Owner be liable for an interruption or failure in the supply of any such utilities to the Leased Premises. All utilities shall be paid by County. County, upon request by Owner, shall install its own water meter at its own cost.

### ARTICLE XV

#### OFFSET STATEMENT, ATTORNMENT SUBORDINATION

#### SECTION 15.01, ESTOPPEL

County, within twenty-five (25) days after receiving notice from, and without charge or cost shall certify by written instrument to that: (i) this Lease is in full force and effect and unmodified (or if modified, stating the modification); and (ii) the dates, if any, which components of the Rent due under this Lease have been paid in the form attached as Exhibit E been paid.

#### SECTION 15.02, ATTORNMENT

County shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Owner covering the Leased Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser

as Owner under this Lease. In the event of transfer by deed in lieu of foreclosure, the County shall attorn to purchaser (upon request of purchaser) and agrees purchaser shall not be bound by payment of rent in advance or by any amendments or modifications to the Lease made without prior written consent of the mortgage or purchaser.

#### SECTION 15.03, SUBORDINATION

County agrees that this Lease and its rights hereunder are hereby subordinate to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the land and/or buildings hereafter placed upon the land of which the Leased Premises are a part, and to all advances made or hereafter to be made upon the security thereof. Such subordination herein shall be self-operating. County further agrees to sign and deliver a Subordination Agreement in the form attached as Exhibit F within twenty-five (25) days after request by Owner

#### SECTION 15.04, ATTORNEY-IN-FACT - INTENTIONALLY OMITTED.

### ARTICLE XVI

#### ASSIGNMENT AND SUBLETTING

#### SECTION 16.01, CONSENT REQUIRED

County will not assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises.

#### SECTION 16.02, CORPORATE OWNERSHIP - INTENTIONALLY OMITTED

### ARTICLE XVII

#### WASTE, GOVERNMENTAL REGULATIONS

#### SECTION 17.01, WASTE OR NUISANCE

County shall not commit or suffer to be committed any waste upon the Leased Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the Leased Premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any other tenant in the building in which the Leased Premises may be located, or in the Shopping Center.

#### SECTION 17.02, GOVERNMENTAL REGULATIONS



County shall, at County's sole cost and expense, comply with all of the requirements of all county, municipal, state, federal and other governmental authorities, now in force, or which may hereafter be in force, pertaining to the Leased Premises, and shall faithfully observe in the use of the Leased Premises all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force. Owner makes no representations or warranties as to whether or not County shall be permitted occupy the Leased Premises.

## ARTICLE XVIII

### ADVERTISING, PROMOTIONAL FUND

#### SECTION 18.01, CHANGE OF NAME

County agrees not to change the advertised name of the business operated in the Leased Premises without the written permission of Owner, which shall not be unreasonably withheld, conditioned or delayed.

#### SECTION 18.02, SOLICITATION OF BUSINESS

County and County's employees and agents shall not solicit business in the parking or other common areas, nor shall County distribute any handbills or other advertising matter in automobiles parked in the parking area or in other common areas.

#### SECTION 18.03, PROMOTIONAL FUND

(a) Owner has established a promotional program to furnish and maintain advertising and sales promotion ("Promotional Program") which in Owner's sole judgment will benefit the Shopping Center. All costs and expenses incurred by Owner, or others on Owner's behalf, in establishing, furnishing, operating and maintaining the Promotional Program (hereinafter the "Promotional Costs") will be charged to County in the manner hereinafter set forth. Such Promotional Costs will include all costs and expenses of every kind and nature as may be paid or incurred by Owner with respect to the Promotional Costs.

(b) Commencing on the Rent Commencement Date, and on the first day of each consecutive month thereafter through the end of the Term, as such may be extended, County will pay to Owner, as its share of the costs of the Promotional Program, a prorated Program Charge computed at the annual rate of \$1.00 per square foot of Leased Premises. The amount of the Promotional Charge may be increased annually by Owner at the end of each calendar year by an amount not to exceed five percent (5%).

(c) Nothing contained in this Lease will require Owner to expend more in any calendar year in performing the Promotional Program than Owner collects from tenants or occupants of the Shopping Center in such calendar year. However, Owner may, but is not

obligated to advance funds to the Promotional Program and any funds so advanced will be repaid to Owner through funds subsequently paid by tenants as Promotional Charges.

## ARTICLE XIX

### DESTRUCTION OF LEASED PREMISES

#### SECTION 19.01, TOTAL OR PARTIAL DESTRUCTION

If the Leased Premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole or in part, Owner shall at its own expense cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence, the Leased Premises shall be rendered untenable only in part, Owner shall at its own expense cause the damage to be repaired, and the fixed minimum rent meanwhile shall be abated proportionately as to the portion of the Leased Premises rendered untenable. If the Leased Premises shall be rendered wholly untenable by reason of such occurrence the Owner shall at its own expense cause such damage to be repaired, and the rent meanwhile shall abate until the Leased Premises have been restored and rendered tenantable, or Owner may at its election, terminate this Lease and the tenancy hereby created by giving County within the sixty (60) days following the date of said occurrence, written notice of Owner's election so to do and in event of such termination rent shall be adjusted as of such date. Notwithstanding anything contained herein to the contrary, the Owner shall not be required to expend, in connection with any such repair, in excess of the insurance proceeds payable to the Owner as a result of such casualty; provided, further, that all or a portion of such proceeds may be required to be paid to Owner's mortgagee(s) in which event the amount of funds available for repair shall be reduced by the amount of such proceeds payable to the mortgagee(s). If the Leased Premises are not repaired to County's reasonable satisfaction, within 120 days of the said occurrence, then the Lease shall terminate at County's option.

#### SECTION 19.02, PARTIAL DESTRUCTION OF SHOPPING CENTER

In the event that fifty percent (50%) or more of the rentable area of the Shopping Center shall be damaged or destroyed by fire or other cause, notwithstanding that the Leased Premises may be unaffected by such fire or other cause, Owner may terminate this Lease and the tenancy hereby created by giving to County five (5) days prior written notice of Owner's election so to do which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

## ARTICLE XX

### EMINENT DOMAIN

#### SECTION 20.01, TOTAL CONDEMNATION OF LEASED PREMISES



If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to that date and County shall have no claim against Owner nor the condemning authority for the value of any unexpired term of this Lease.

#### SECTION 20.02, PARTIAL CONDEMNATION

If any part of the Leased Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Leased Premises unsuitable for the business of the County, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding. County shall have no claim against Owner nor the condemning authority for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Leased Premises unsuitable for the business of the County, then Owner shall promptly restore the Leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent.

#### SECTION 20.03, OWNER'S DAMAGES

In the event of any condemnation or taking as aforesaid, whether whole or partial, County shall not be entitled to any part of the award paid for such condemnation and Owner is to receive the full amount of such award.

#### SECTION 20.04, COUNTY'S DAMAGES

Although all damages in the event of any condemnation are to belong to the Owner whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, County shall retain the right to claim and recover from the condemning authority, but not from Owner, such compensation as may be separately awarded or recoverable by County in County's own right on account of any and all damage to County's business by reason of the condemnation and for or on account of any cost or loss to which County might be put in removing County's merchandise, furniture, fixtures, leasehold improvements and equipment.

### ARTICLE XXI

#### DEFAULT

#### SECTION 21.01, OWNER'S REMEDIES

If the County shall make default in payment of the rents, including any amounts denominated as additional rent reserve hereunder for a period of seven (7) days after any of the same shall have



become due and payable as aforesaid, or if County shall abandon or appear to abandon the Leased Premises or fail to conduct retail business therein, for a period of seven (7) consecutive business days except for repairs or restoration of the Leased Premises with the consent of the Owner, or if default shall be made by County in any of the other covenants and agreements herein contained to be kept and fulfilled on the part of the County for a period of thirty (30) days after written notice of such default is given by the Owner to the County without action by the County to remedy such default and continuance of such action to remedy such default to conclusion with reasonable diligence or if County makes any transfer, assignment, conveyance, sale pledge or disposition of all or a substantial portion of its property, or removes a substantial portion of its personal property from the Leased Premises other than by reason of any assignment or subletting of the Leased Premises permitted under this Lease, or if the County's interest herein shall be sold under execution, then and forthwith thereafter the Owner shall have the right at its option and without prejudice to its rights hereunder, to terminate this Lease and/or to re-enter and take possession of the Leased Premises, or the Owner, without such re-entry may recover possession of the Leased Premises in the manner prescribed by the statute relating to summary process, and any demand for rent, re-entry for condition broken, and any and all notice to quit, or other formalities of any nature, to which the County may be entitled, in such event, are hereby specifically waived; and that after default be made in any of the covenants contained herein, the acceptance of rent or failure to re-enter by the Owner shall not be held to be a waiver of its right to terminate this Lease, or re-enter the Leased Premises, and the Owner may re-enter and take possession thereof the same as if no rent had been accepted after such default. In addition thereto, on the happening of any event of default, the Owner may, at its option declare immediately due and payable all the remaining installments of rent herein provided for and such amount, less the fair market value of the Leased Premises, for the residue of said term shall be construed as liquidated damages. All of the remedies given to the Owner in this paragraph, or elsewhere in this lease in the event of default by County, are in addition to and not in derogation of all other rights or remedies to which Owner may be entitled under the laws of the State of Maryland, and all such remedies shall be deemed cumulative such that the election of one shall not be deemed a waiver of any other or further rights or remedies.

#### SECTION 21.02, RIGHT TO RELET

Should Owner elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the Leased Premises, and relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Owner in its sole discretion may deem advisable; upon each such reletting all rentals received by Owner from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from County to Owner; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Owner and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be



paid during that month by County hereunder, County shall pay any such deficiency to Owner. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Leased Premises by Owner shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to County or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Owner may at any time thereafter elect to terminate this lease for such previous breach. Should Owner at any time terminate this Lease for any breach, in addition to any other remedies it may have, it may recover from County all damages it may incur by reason of such breach, including the cost of recovering the Leased Premises, reasonable attorney's fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the Leased Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from County to Owner.

#### SECTION 21.03, LEGAL EXPENSES

In case suit shall be brought for recovery of possession of the Leased Premises, for the recovery of rent or any other amount due under the provisions of this lease, or because of the breach of any other covenant herein contained on the part of County to be kept or performed, and a breach shall be established, County shall pay to Owner all expenses incurred therefor, including a reasonable attorney's fee. Likewise, Owner shall pay to County all expenses and reasonable attorney's fees in any legal proceeding in which County prevails.

In order to defray the additional expenses involved in collecting and handling delinquent payments, County shall pay on demand a late charge of One Hundred Dollars (\$100.00) when any installment of rent (minimum or additional) is paid more than ten (10) days after the due date thereof. This charge is intended to compensate Owner for additional costs incurred by it and is not to be considered interest. The past due rent charge is in addition to all other late payments and charges, including interest and attorney's fees as herein before provided. Failure of Owner to insist upon the payment of the late charge, isolate or repeated, shall not be deemed a waiver of Owner's right to impose such charge for any future default. Notwithstanding the foregoing, such past due rent charge shall not be imposed the first time it would otherwise be due during any twelve (12) month period, provided County shall make such payment within ten (10) days after notice from Owner that payment has not been timely received.

#### SECTION 21.04, WAIVER OF JURY TRIAL

Should any controversy arise by and between the Parties concerning any of the terms and conditions contained in this Lease, or the payment of monies due hereunder, each of the Parties hereby knowingly, voluntarily and intentionally waives its right to a jury trial and freely elects to



be tried by a court of competent jurisdiction without a jury in the State of Maryland where the Leased Premises is located.

#### SECTION 21.05, WAIVER OF RIGHTS OF REDEMPTION

County hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of County being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of the Leased Premises, by reason of the violation by County of any of the covenants or conditions of this lease, or otherwise.

#### SECTION 21.06 DEFAULT BY OWNER

In the event that the Owner or his assigns shall fail or neglect to keep and perform each and every one of the covenants, conditions, and agreements contained in this Lease, and such failure or neglect is not remedied within thirty (30) days (or such longer period as either otherwise provided herein on as may reasonably be required to correct the default with exercise of due diligence) after written notice from the County or his assigns specifying the default, then the County or his assigns, at County's option, may terminate this Lease upon written notice to Owner, in which event the Owner and County shall be released from all liability to the other hereunder. It is understood, however, that the Owner shall be entitled to notice, hearing and opportunity to cure or contest any claimed violations of the foregoing as to the full extent provided by federal, state or local law.

### ARTICLE XXII

#### ACCESS BY OWNER

#### SECTION 22.01, RIGHT OF ENTRY

Owner or Owner's agents shall have the right to enter the Leased Premises at all reasonable times to examine the same, and to show them to prospective purchasers or lessees of the building, and to make such repairs, alterations, improvements or additions as Owners may deem necessary or desirable, and Owner shall be allowed to take all material into and upon said Leased Premises that may be required therefor without the same constituting an eviction of County in whole or in part and the rent reserved shall in no way abate while said repairs, alterations, improvements, or additions are being made, by reason of loss or interruption of business of County, or otherwise. During the six (6) months prior to the expiration of the term of this Lease or any renewal term, Owner may exhibit the Leased Premises to prospective tenants or purchasers, and place upon the Leased Premises the usual notices "To Let" or "For Sale" which notices County shall permit to remain thereon without molestation. If County shall not be personally present to open and permit an entry into the Leased Premises, at any time, when for any reason an entry therein shall be necessary or permissible, Owner or Owner's agents may enter the same by a master key, or may forcibly enter the same, without rendering Owner or such agents liable therefor, and without in any manner affecting the obligations and covenants of this



Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Owner any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

#### SECTION 22.02, EXCAVATION.

If an excavation shall be made upon land adjacent to the Leased Premises, or shall be authorized to be made, County shall afford to the person causing or authorized to cause such excavation, license to enter upon the Leased Premises for the purpose of doing such work as Owner shall deem necessary to preserve the wall or the building of which the Leased Premises form a part from injury or damage and to support the same by proper foundations, without any claim for damages or indemnification against Owner or diminution or abatement of rent.

### ARTICLE XXIII

#### COUNTY'S PROPERTY

#### SECTION 23.01, TAXES ON LEASEHOLD

County shall be responsible for and shall pay before delinquency all municipal, county or state taxes assessed during the term of this lease against any leasehold interest or personal property of any kind, owned by or placed in, upon or about the Leased Premises by County.

#### SECTION 23.02, LOSS AND DAMAGE.

Owner shall not be liable for any damage to property of County or of others located on the Leased Premises, nor for the loss of or damage to any property of County or of others by theft or otherwise. Owner shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Leased Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other place or by dampness or by any other cause of whatsoever nature. Owner shall not be liable for any such damage caused by other tenants or persons in the Leased Premises, occupants of adjacent property, of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of County kept or stored on the Leased Premises shall be so kept or stored at the risk of County only and County shall hold Owner harmless from any claims arising out of damage to the same, unless such damage shall be caused by the willful act or gross neglect of Owner, subject to the Insurance provisions of this Lease.

#### SECTION 23.03, NOTICE BY COUNTY

County shall give immediate notice to Owner in case of fire or accidents in the Leased Premises or in the building of which the Leased Premises are a part of defects therein or in any fixtures or equipment.

## ARTICLE XXIV

### HOLDING OVER, SUCCESSORS

#### SECTION 24.01, HOLDING OVER

County shall not hold over upon termination of this lease, as provided for herein, and if it does it shall be subject to the penalties and proceedings of Maryland law, which shall be a minimum of one and half of the rental payable during the last month of the term.

Notwithstanding the foregoing, the words "one and half" shall be deemed to be omitted from the preceding sentence if, during negotiations to enter into a new lease, the Owner waives such requirement in writing.

#### SECTION 24.02, SUCCESSORS

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties.

#### SECTION 24.03, TRANSFER OF OWNER'S INTEREST; LIABILITY

Notwithstanding any provision of this Lease to the contrary, in the event of the sale or other transfer of Owner's interest in the Leased Premises or the Shopping Center, (i) Owner shall thereupon and without further act by either party hereto be released and discharged of all covenants and obligations of Owner hereunder thereafter accruing, and (ii) it shall be deemed and construed conclusively, without further agreement between the parties, that the purchaser or other transferee or assignee has assumed and agreed to perform the obligations of Owner thereafter accruing. If Owner or any successor in interest to Owner shall be an individual, joint venture, tenancy in common, firm or partnership, general or limited, there shall be no personal liability on such individual, firm, partnership, joint venture with respect to any of the provisions of this lease or any obligations arising therefrom in connection therewith, except for the gross negligence or criminal acts committed by such individual, firm, partnership, or joint venture of Owner. In such event, County and its successors and assigns and any one claiming derivatively through County, shall look solely to the equity of the then owner of the Shopping Center for the satisfaction of remedies by County or any other party in the event of a breach by the Owner of any of its obligations hereunder.

## ARTICLE XXV

### QUIET ENJOYMENT

#### SECTION 25.01, OWNER'S COVENANT



Upon payment by County of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on County's part to be observed and performed, County shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby Leased without hindrance or interruption by Owner or any other person or persons lawfully or equitably claiming by, through or under the Owner, subject, nevertheless, to the terms and conditions of this lease.

## ARTICLE XXVI

### MISCELLANEOUS

#### SECTION 26.01, WAIVER

The waiver by Owner of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach if the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Owner shall not be deemed to be a waiver of any preceding breach by County of any term, covenant or condition of this lease, other than the failure of County to pay the particular rental so accepted, regardless of Owner's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Owner, unless such waiver be in writing by Owner.

#### SECTION 26.02, ACCORD AND SATISFACTION

No payment by County or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

#### SECTION 26.03, ENTIRE AGREEMENT

This Lease and the Exhibits, and Riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Owners and County concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Owner or County unless reduced to writing and signed by them.

#### SECTION 26.04, NO PARTNERSHIP

Owner does not, in any way or for any purpose, become a partner of County in the conduct of its business, or otherwise or joint adventurer or a member of a joint enterprise with County.

#### SECTION 26.05, NOTICES

Any notice, demand, request or other instrument which may be or are required to be given under this lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed (a) if to Owner at the address first hereinabove given or at such other address as Owner may designate by written notice and (b) if to County at the following address or such other address as County shall designate by written notice.

#### COUNTY:

Montgomery County, Maryland  
Department of Liquor Control  
16650 Crabbs Branch Way  
Rockville, MD 20855  
Attn: Director

Montgomery County, Department of General Services  
Office of Real Estate  
101 Monroe Street, 10th Floor  
Rockville, Maryland 20850  
Attn: Director of Real Estate

With a copy that does not constitute a notice:

Office of the County Attorney for Montgomery County Maryland  
101 Monroe Street, 3rd Floor  
Rockville, Maryland 20850  
Attn: County Attorney

#### SECTION 26.06, CAPTIONS AND SECTION NUMBERS

The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in now way define, limit, construe, or describe the scope or intent of such sections or articles or this lease nor in any way affect this lease.

#### SECTION 26.07, COUNTY DEFINED, USE OF PRONOUN

The use of the neuter singular pronoun to refer to Owner, Owner or County shall be deemed a proper reference even though Owner, Owner or County may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this lease apply in the plural sense



where there is more than one Owner, Owner or County and to either corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

#### SECTION 26.08, BROKER'S COMMISSION

Each of the parties represents and warrants that there are no claims for brokerage commission or finder's fees in connection with the execution of this Lease, except to AMR Commercial, LLC, as agent for Owner, and AMR Commercial, LLC (whose commission shall be paid by Owner) and each of the parties agrees to indemnify the other against, hold it harmless from, all liabilities arising from any such claim (including without limitation, the cost of counsel fees in connection therewith).

#### SECTION 26.09, PARTIAL INVALIDITY

If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

#### Section 26.10, NO OPTION

The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises and this Lease becomes effective as a Lease only upon execution and delivery thereof by Owner and County.

#### SECTION 26.11, RECORDING

County may record this Lease: however, in lieu of recording the Lease, upon the request of either Party hereto the other Party shall join in the execution of a memorandum or so-called "short form" of this Lease for the purposes of recordation. Said memorandum or short form of this lease shall describe the Parties, the Leased Premises and the term of this Lease and shall incorporate this Lease by reference. The Party causing the recording shall be responsible for all costs thereof, including the payment of any transfer or recordation taxes imposed in connection therewith.

#### SECTION 27.01, DISPUTES

County agrees not to institute proceedings in any court of competent jurisdiction on any dispute between the parties hereto without first giving thirty (30) days notice in writing of such intent. The Owner agrees not to institute proceedings in any court of competent jurisdiction on any dispute between the parties hereto without first giving thirty (30) days notice in writing of such intent.



SECTION 28.01, POWER-OF-ATTORNEY - INTENTIONALLY OMITTED

SECTION 29.01, OWNER'S LIEN - INTENTIONALLY OMITTED

SECTION 30.01. OWNER'S REDEVELOPMENT TERMINATION RIGHT.

Anything herein to the contrary regarding the term of this Lease, Owner shall have the right ("Owner's Special Termination Right"), in its sole and absolute discretion, upon not less than six (6) months written notice to County, to terminate this Lease at any time after the fifth (5<sup>th</sup>) lease year, ("Owner's Termination Notice") if Owner plans to demolish, substantially renovate or change the use of the Shopping Center. If Owner exercises Owner's Special Termination Right, then County agrees to and shall surrender to Owner sole and exclusive possession of the entire Leased Premises by not later than the date specified in Owner's Termination Notice (the "Surrender Date"), which date shall not be less than six months following the date of such Notice. It is agreed that if County does not surrender to Owner exclusive possession of the entire Leased Premises on or before the Surrender Date, then in such event, Owner at its sole and absolute discretion shall have the right to treat County's occupancy of the Leased Premises as a tenant at sufferance and County shall be liable to Owner for monthly use and occupancy thereafter in an amount equal to three (3) times the monthly rental and all other sums payable during the full calendar month immediately preceding the Surrender Date and County shall also be liable to Owner for payment of all loss, costs, damage and expense incurred by Owner as a result of County's failure to surrender the Leased Premises timely, including all costs and expenses Owner incurs in recovering possession of the Leased Premises.

At the time Owner delivers exercises Owner's Termination Right hereunder, Owner shall notify County, in writing, of Owner's plans for redevelopment or alteration of the use of the Shopping Center. If the Owner's plans include redevelopment of the property for exclusively retail purposes, or mixed use retail and office development, Owner will provide County a right of first refusal to lease space for the permitted use set forth in this Lease, in the redevelopment or renovated improvements, in a location to be approved by Owner and at the then current market rent and terms. County will have thirty (30) days following written receipt of Owner's plans to enter into a Letter of Intent to lease space in the redeveloped property. If the County fails to enter into a Letter of Intent with Owner within such time period, then this right of first refusal shall lapse and terminate.

31.01 NON-DISCRIMINATION: Owner agrees to comply with the non-discrimination policies in County contracts as required by Section 11B-33 and Section 27 of the Montgomery County Code 2004, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Owner assures the County that in accordance with applicable law; it does not, and agrees that it will not discriminate in any manner on the basis of race, color, religious creed, sex, martial status, national origin, ancestry, disability, sexual orientation or genetic status.



32.01 NON-APPROPRIATION: This Lease is subject to the appropriation of funds. The Montgomery County Department of Liquor Control will include a request for appropriation of funds for this Lease in its annual budget request for each fiscal year during the term of this Lease. If funds are not appropriated, for any reason whatsoever, the Lease will automatically terminate on July 1 of the calendar year which the County does not appropriate funds. County shall give the Owner at least thirty (30) days written notice of the lack of appropriation. The County shall not make or be entitled to any claim for reimbursement of any kind, whether for improvements or prepaid items.

33.01 PUBLIC EMPLOYMENT: Owner understands that unless authorized under Chapter 19A and Section 11B-52 of the Montgomery County Code (2004), as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Owner and County have signed and sealed this lease as of the day and year first above written.

WITNESS:

\_\_\_\_\_

OWNER:

**DRAIMAN PROPERTIES**

By: 

David Draiman, Managing Member

\_\_\_\_\_

COUNTY:

**MONTGOMERY COUNTY,  
MARYLAND**

By:  7/24/08

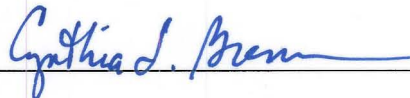
Diane Schwartz Jones, Assistant  
Chief Administrative Officer

APPROVED AS TO FORM AND  
LEGALITY OFFICE OF THE  
COUNTY ATTORNEY

RECOMMENDED

By: 

Associate County Attorney

By: 

Cynthia Brenneman, Director  
Office of Real Estate

Date: 7/16/2008

Date: 7/15/08



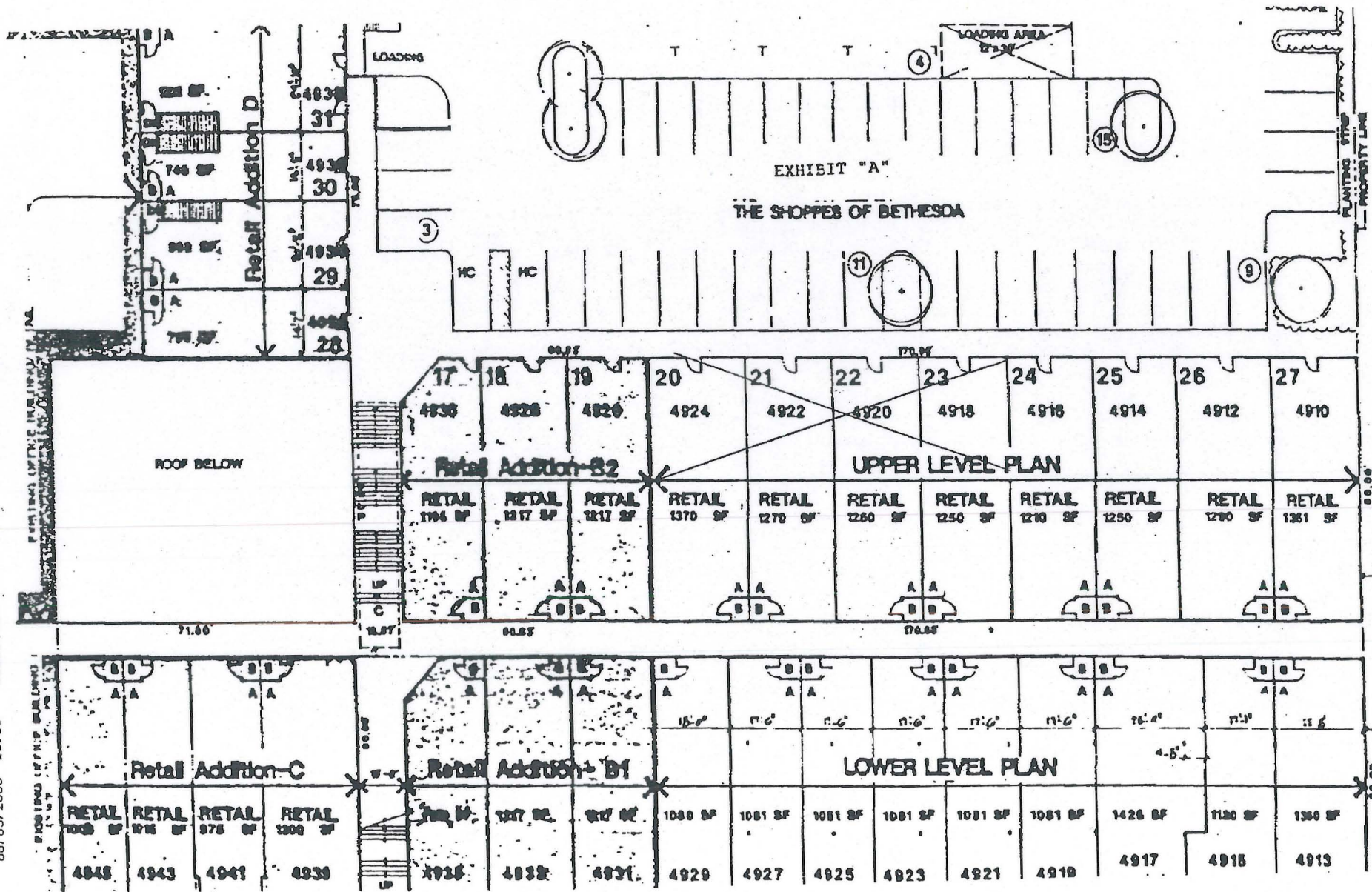


EXHIBIT "B"

Owner's Build-out Condition

**INTENTIONALLY OMITTED.**



## **EXHIBIT C**

### **RULES AND REGULATIONS**

Tenant agrees as follows:

(1) All loading and unloading of goods shall be done only at such times, in the areas and through the entrance designated for such purpose by Owner. For the purposes of this Lease, the County shall use the far right door of the Leased Premises.

(2) The delivery or shipping of merchandise, supplies, and fixtures to and from the Leased Premises on Hampden Lane shall be subject to such rules and regulations as in the judgment of the Owner are necessary for the proper operation of the Shopping Center, provided however, the Owner agrees to provide the County reasonable written notice of any change in the rules and regulations. The County shall not be permitted to receive deliveries of inventory, or to make deliveries of inventory in connection with wholesale sales on any day after 8:30 a.m.

(3) No radio or television (except for Closed circuit TV anti-theft devices) or other similar device shall be installed without first obtaining in each instance Owner's consent in writing, which shall not be unreasonably withheld, conditioned or delayed. No aerial shall be erected on the roof or exterior walls of the Leased Premises or on the grounds without in each instance, the written consent of the Owner which shall not be unreasonably withheld, conditioned or delayed. An aerial so installed without any written consent shall be subject to removal without notice at any time.

(4) No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Leased Premises without the prior written consent of Owner which shall not be unreasonably withheld, conditioned or delayed.

(5) The plumbing facilities shall not be used for any other purposes than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by County who shall, or whose employees or invitees shall, have caused it.

(6) The County shall use, at County's cost, a pest extermination contractor as County may select and at reasonable intervals as County may require.

(7) The outside areas immediately adjoining the Leased Premises shall be kept clean and free from snow, ice, dirt and rubbish by County to the satisfaction of the Owner, and the County shall not place or permit any obstructions or merchandise in such areas.

**END OF RULES AND REGULATIONS**

THE SHOPPES OF BETHESDA

EXHIBIT D

Tenant Signage Specifications

1. SCOPE OF TENANT SIGNAGE

- 1.1 Individual tenant identification shall conform in size, configuration, color and installation as specified herein.
  - 1.1.1 Building mounted plexi-glas letters secured to the sign band area.
  - 1.1.2 Under canopy walkway signs secured to awning soffit in front of store.

2. LIMITATIONS TO TENANT SIGNAGE

- 2.1 This Exhibit comprises the sole governing regulation in any agreement between Landlord and Tenant with reference to Tenant signage. Nothing written in Montgomery County Zoning Ordinance less restrictive than regulations set forth herein shall be construed as permissible. All signs shall comply with regulations of Montgomery County Zoning Ordinance with respect to further restrictions set forth herein.
- 2.2 "Tenant Name" shall be limited to the name as established in Tenant Lease Agreement. Additional copy describing the type of business conducted is prohibited, except as noted herein.
- 2.3 "Trademark/Logo" identification shall be limited to Tenant's design as established in Tenant Lease Agreement.

3. SIZE, CONSTRUCTION, ILLUMINATION, CONFIGURATION AND COLOR

3.1 Building mounted plexi-letters.

- 3.1.1 Tenant Identification Copy for building mounted plexi-glas letters shall be limited to area provided at each Tenant Bay. See enclosed drawing.
- 3.1.2 Tenant name and/or Trademark/Logo shall be individual letters with a maximum depth of 1" and flush mounted to building front on sign band area. All fasteners to be concealed and rust proof.
- 3.1.3 Individual letters to be constructed of plexi-glas with minimum thickness of 1/8".
- 3.1.4 Tenant sign copy to be limited in size. One line of copy not to exceed 22" in height. Two lines of copy may be used if each letter does not exceed 10" in height. Any deviation to be pre-approved by Owner or Owners Representative.
- 3.1.5 Color and style of identification face shall be white with black side returns. Copy helvetica medium.

3.2 Soffit Suspended Awning Sign - All Tenants

- 3.2.1 Tenant soffit sign shall be limited in size to one foot four inches in height (1-4") by three foot in length (3'-0") by 2 1/4" thick.



3.2.2 Copy for sign shall be similar in character to copy for Building Mounted Sign and shall be limited to the Tenant name as established in Tenant Lease Agreement. Additional copy briefly describing the type of business conducted shall not be permitted. Copy shall be limited to one line of maximum height 3". Submit in accordance with "Approval Procedures."

3.2.3 Tenant Soffit Sign shall be constructed of redwood. Primed and painted designated color by owner with white vinyl applied copy - identical on both sides.

3.2.4 Additional hanging, projecting or building mounted signs of any type are prohibited.

#### 4. TENANT RESPONSIBILITIES

4.1 Tenant Responsibilities - Tenant shall provide and install all Tenant signage and mounting hardware described herein shall be sole responsibility of the Tenant. Power to all Tenant signs, shall be provided and paid by tenant through individual tenant electric panels. Maintenance of Tenant signage, in its entirety, shall be the responsibility of the Tenant. Tenant shall provide time clock at Tenant panel for operation of signs as described in paragraph 5 hereunder.

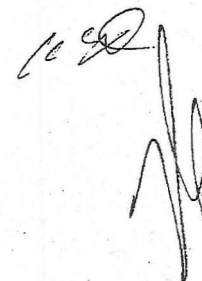
4.2 Tenant shall provide soffit sign secured to awning, soffit, one per Tenant. During period of Shopping Center remodeling, tenant may arrange and provide temporary window sign, which shall be displayed on side of storefront glass. Size shall be limited to 3'0" high by .75% width of Tenant storefront. Owner will notify tenant ten (10) days prior to removal of existing tenant signs. TO BE REMOVED AT TENANTS EXPENSE. If sign is not removed within that time owner reserves the right to remove said sign and charge tenant.

#### 4.3 Approval Procedures.

4.3.1 Tenant shall submit to owner for approval three (3) drawings describing Tenant Identification copy for all signs. Such drawings shall include method of attachment, size, configuration and location of sign faces and Tenant Identification copy. Upon approval, Owner will return one (1) copy of drawing to Tenant to proceed with permit process and Installation.

4.3.2 Tenant shall submit Owner three (3) color samples of all signage for approval.

4.3.3 Tenant shall apply for and obtain all necessary Montgomery County sign permits.

A handwritten signature or set of initials, possibly "C. D.", followed by a long, vertical, wavy line that extends downwards.

## EXHIBIT E

### TENANT ESTOPPEL CERTIFICATE

To: , its successors and/or assigns ("Lender")  
     , its successors and/or assigns ("Purchaser")

Re: Property Address: ("Property")  
     Lease Date:  
     Between ("Landlord") and  
     Montgomery County, Maryland, through the Board of Liquor Control ("County")  
     Square Footage Leased:  
     Suite No./Floor: ("Premises")

Landlord has requested that the County provide Landlord with an Estoppel Certificate as permitted from time to time under the terms of the above-referenced lease ("Lease"). The County hereby acknowledges the following:

- (1) The Lease and all amendments to the Lease attached as Exhibit "A" is a true, correct, and complete copy of the Lease, as amended; is in full force and effect; and has not been modified, supplemented, or amended in any way other than in writing attached as part of Exhibit A. The Lease as amended in Exhibit A represents the entire agreement between the Landlord and Tenant as to the Premises or any part of the Premises.
- (2) The Lease Term commenced on \_\_\_\_\_, and terminates on \_\_\_\_\_. The Lease provides for \_\_\_\_\_ renewal/extension option(s) of \_\_\_\_\_ (months/years) each. The County has exercised \_\_\_\_\_ renewal/extension options on the date that this Certificate is issued by the County.
- (3) The amount of fixed monthly rent is \$ \_\_\_\_\_; the monthly common area or other charges are \$ \_\_\_\_\_. The base year for operating expenses and real estate taxes, as defined in the Lease, is calendar year 200\_. Except the first installment of rent, no rent has been paid more than one (1) month in advance of its due date.
- (4) The County paid no security deposit under the terms of the Lease. The County has paid rent for the Premises through \_\_\_\_\_, 200\_.
- (5) The County currently occupies the Premises.
- (6) All work to be completed by Landlord for the County prior to occupancy has been performed as required and has been accepted by the County; and any payments, free rent, or other payments, credits, allowances or abatements required to be given by Landlord up to the date of issuance of this Certificate have been credited or paid to the County.
- (7) As of the date that this Certificate is issued by the County, the County has no knowledge of any default by Landlord other than those specified in Exhibit B, attached. As of the date that this Certificate is issued by the County, the County has no knowledge of any



offset, defense, deduction or claim against Landlord other than those listed in Exhibit B, attached.

- (8) The County is not in default under the Lease.
- (9) The County has not assigned the Lease or sublet all or any portion of the Premises, except as listed in Exhibit C, attached. Any sublease or assignment documents are attached as part of Exhibit C.
- (10) Any notices to be sent to the County should be sent in the form required in the Lease to:

Montgomery County, Maryland  
Office of Real Estate  
101 Monroe Street  
10th Floor  
Rockville, MD 20850

With a copy that does not constitute notice to:

Office of the County Attorney  
101 Monroe Street, 3rd Floor  
Rockville, MD 20850

- (11) The undersigned is duly authorized to execute this Certificate.

COUNTY:  
**Montgomery County, Maryland**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT F

### SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (the "Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2008 among \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Lender"), \_\_\_\_\_, a \_\_\_\_\_ corporation ("Landlord"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic and a political subdivision of the State of Maryland (the "Tenant"), (the Lender, the Landlord, and the Tenant together the "Parties").

### RECITALS

A. Landlord and Tenant have entered into a certain lease agreement dated \_\_\_\_\_, 2007 [and amended \_\_\_\_\_, 20\_\_] (the "Lease") for the premises consisting of \_\_\_\_\_ square feet, more or less (the "Leased Premises"). The Leased Premises are part of the property located in Montgomery County, Maryland known as Parcel \_\_\_\_ on Tax Map \_\_\_\_\_, commonly known as [street address], and more particularly described on **EXHIBIT A**, attached and incorporated as if fully set forth (the "Property").

B. Lender and the Landlord have represented to the Tenant that the Lender will make a loan to the Landlord in the principal amount of \_\_\_\_\_ AND 00/100s DOLLARS (\$\_\_\_\_\_) (the "Loan"), secured by a mortgage or deed of trust which will be recorded among the Land Records for Montgomery County, Maryland, and which may be amended or modified from time to time (the "Mortgage") and an assignment of leases and rents from the Landlord to the Lender, which covers the Property, including the Leased Premises.

C. Tenant has agreed that the Lease shall be subject to and subordinate to the Mortgage held by the Lender, provided Tenant is assured of continued occupancy of the Premises under the Terms of the Lease.

NOW, THEREFORE, for and in consideration of the mutual covenants made among the Parties in this Agreement, and the payment of the sum of \$10.00 by the Lender to the Tenant, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Subordination and Consent. The Parties agree that the Lease is and shall continue to be subject and subordinate to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage and to all advances made under the Mortgage. Tenant acknowledges that Landlord will execute and deliver to the Lender an assignment of the Lease as security for the Loan, and Tenant expressly consents to the assignment. Tenant agrees that if there is a default by the Landlord in performance of the terms of the Loan that Lender may, at Lender's option,



demand in writing sent to the Tenant by first class mail, postage prepaid and certified mail to the address provided below, that all payments of rent and additional rent due under the Lease must be paid directly by Tenant to the Lender at the address specified below or as otherwise specified in writing by the Lender to the Tenant. Tenant agrees that not more than 30 days after receiving the Lender's written demand for payment of rent directly to the Lender that Tenant will remit all payments of rent and additional rent due under the Lease to the Lender at the address provided by the Lender in writing. THE PARTIES AGREE THAT PAYMENTS MADE TO LENDER IN ACCORDANCE WITH THE REQUIREMENTS OF THE LEASE AND THIS AGREEMENT WILL CONSTITUTE PERFORMANCE OF THE TENANT'S PAYMENT OBLIGATIONS UNDER THE LEASE, AND THAT NEITHER THE LANDLORD NOR THE LENDER WILL HAVE ANY CLAIMS AGAINST THE COUNTY FOR ANY RENT, ADDITIONAL RENT, OR OTHER PAYMENTS MADE BY TENANT IN CONFORMANCE WITH THE TERMS OF THE LEASE AND THIS AGREEMENT AT THE WRITTEN DIRECTION OF THE LENDER. The Landlord and the Lender fully indemnify the Tenant for any such payments made under this Paragraph, and the Lender will provide a defense to any claim for payment made by the Landlord or any party claiming through the Landlord for payments made by Tenant to the Lender under this Agreement.

2. Nondisturbance. The Lender agrees with the Tenant that, in the event that the Lender becomes the fee simple owner of the Property, so long as Tenant complies with and performs all of Tenant's material obligations under the Lease, (a) the Lease will remain in full force and effect as a direct Lease between the Lender, including the Lender's successors and assigns, and the Tenant, subject to all of the terms, covenants and conditions of the Lease, for the balance of the Lease Term, and that Lender and Lender's successors and assigns will not disturb Tenant's possession of the Leased Premises, and (b) the Lender and the Lender's successors and assigns will recognize Tenant as the tenant of the Leased Premises for the remainder of the Lease Term in accordance with the provisions of the Lease. THE PARTIES AGREE THAT IF THE LENDER OR THE LENDER'S SUCCESSORS OR ASSIGNS BECOMES THE FEE SIMPLE OWNER OF THE PROPERTY, LENDER WILL NOT BE: (I) SUBJECT TO ANY CLAIMS, OFFSETS, OR DEFENSES WHICH TENANT MIGHT HAVE AGAINST LANDLORD; OR (II) LIABLE FOR ANY ACT OR OMISSION OF LANDLORD; OR (III) BOUND BY ANY RENT OR ADDITIONAL RENT PAID MORE THAN ONE MONTH IN ADVANCE OR ANY SECURITY DEPOSIT OR OTHER PREPAID CHARGE PAID TO LANDLORD; OR (IV) BOUND BY ANY AMENDMENT OR MODIFICATION OF THE LEASE UNLESS WRITTEN NOTICE OF THE AMENDMENT OR MODIFICATION WAS PROVIDED TO THE LENDER IN ADVANCE.

3. Attornment. The Tenant agrees that if Lender becomes the fee simple owner of the Property and provides the Tenant with written notice of the change in ownership, the Tenant will attorn to and recognize Lender or Lender's successors or assigns as the landlord under the Lease for the remainder of the Lease Term, and the Tenant will perform all of its obligations under the Lease.



4. Lender's Option to Cure Lease Defaults. If Landlord fails to perform or observe any of the terms, conditions, or agreements in the Lease, Tenant will give written notice to the Lender and the Lender will have the right, but not the obligation, to cure the default or defaults on behalf of the Landlord. Tenant will not terminate or rescind the Lease or withhold payments of rent or additional rent under the Lease for a period of 30 days following receipt of written notice from the Lender of Lender's intention to cure the default so long as the Lender proceeds to promptly cure the default. If Lender acts promptly upon notice from the Tenant to cure the default and, despite the Lender's prompt, diligent, and continuous efforts to cure the default Lender is unable to complete the cure within 30 days, then the Lender and the Tenant may agree that the time within which the cure must be completed may be extended for a reasonable period of time not to exceed 60 days as may be necessary for the Lender to complete the cure.

5. Obligations and Liability of Lender. Unless otherwise agreed in writing, the Lender shall have no obligations under the Lease unless Lender becomes the fee simple owner of the Property. So long as the Lender remains a mortgagee with bare legal title to the Property securing repayment of the Loan to the Landlord, then the Lender is not responsible for any of Landlord's obligations under the Lease other than the Lender's voluntary efforts to cure defaults as provided above in this Agreement. If Lender becomes the fee simple owner of the Property, then Lender will step into the shoes of the Landlord with respect to the Landlord's obligations under the Lease until such time as the Lender transfers fee simple ownership of the Property to a new owner, who will assume all of Landlord's obligations under the Lease.

6. Severability. If any provision of this Agreement is found by a court to be unenforceable, then all provisions not invalidated or found by the court to be unenforceable will remain in full force and effect.

7. Governing Law and Choice of Forum. This Agreement is governed by and must be construed under the laws of the State of Maryland without regard to conflicts of laws principles. Any claim or action to enforce, interpret, or invalidate this Agreement must be filed and maintained in a court of competent jurisdiction located in Montgomery County, Maryland.

8. Notices. All notices required to be given under this Agreement will be deemed to be satisfactorily given if mailed, first class, postage prepaid and certified with return receipt or hand delivered by a nationally recognized receipted delivery service to:

If to the Lender, to:

If to the Landlord, to:



If to the County, to:                   Montgomery County Government  
Department of General Services  
101 Monroe Street, 10<sup>th</sup> Floor  
Rockville, MD 20850  
Attn: Director, Office of Real Estate

with a copy that does  
not constitute notice to:           Office of the County Attorney  
101 Monroe Street, 3<sup>rd</sup> Floor  
Rockville, MD 20850  
Attn: County Attorney

Notices will be deemed effective three (3) business days following deposit of first class and certified mail copies with the U.S. Postal Service or on the first business day following hand delivery to the addressee. Parties must provide written notice of address changes to all other Parties as provided in this Paragraph. Any notice of address change provided as required in this Paragraph will be effective 30 days after it is deemed to be effective.

9. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties, their successors, and assigns.

10. Tenant's Personal Property. The Mortgage may not, under any circumstances, be construed to encumber any of Tenant's moveable trade fixtures, business equipment, furniture, signs, or other personal property placed or kept at any time on the Leased Premises.

11. Headings. The headings and captions used in this Agreement are for convenience only, and shall not affect interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this document effective the date first written above.

LENDER:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Notary jurat for Lender

LANDLORD:  
**DRAIMAN PROPERTIES 4, LLC,**

By: \_\_\_\_\_  
General Partner

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for the State of Maryland, personally appeared \_\_\_\_\_, who acknowledged himself to be the managing member/authorized person of Draiman Properties 4, LLC, a Maryland limited liability corporation, and that she/he, as managing member/authorized person, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited partnership by himself/herself as managing member/authorized person of Draiman Properties 4, LLC .

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:

\_\_\_\_\_



TENANT

Montgomery County, Maryland  
a body corporate and politic and a  
political subdivision of the State of  
Maryland

By: \_\_\_\_\_  
Diane R. Schwartz Jones  
Assistant Chief Administrative Officer

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me the undersigned officer,  
personally appeared Diane R. Schwartz Jones, known to me to be an Assistant Chief  
Administrative Officer for Montgomery County, Maryland, and that she, as such  
Assistant Chief Administrative Officer, being authorized to do so, executed the foregoing  
Agreement by signing the name of Montgomery County, Maryland by herself as  
Assistant Chief Administrative Officer.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires On:  
  
\_\_\_\_\_